

IDEA OF THE EUROPEAN UNION'S ORGANIZATIONAL SYSTEM

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Abstract: *The European Union established cooperation between the member-states which was unique so far. The EU is not a traditional international organization; nor a classic federal state. This paper put the focus on the most important public characters of the institutional system of the EU by summarizing them into ten points. After it, the future of the mentioned institutional system is outlined.*

Keywords: *European Union, institutional system, the principle of cooperation, the principle of institutional balance, the democratic deficit.*

JEL Classification: K00

There's no doubt about the fact the European Union – which was established in 1992, by the Treaty of Maastricht – established a cooperation between the member-states which was unprecedented so far. The European Union differs from the traditional international organizations and also from federal states.

The EU is not a traditional international organization, because i.e.:

- it has such an organizational system, in which decision-making is an ordinary daily task
- the typical way of decision-making is not consensual, rather it applies qualified majority
- it has its own legal system that has a direct effect and can be directly applied and it has priority compared to the legal systems of the member states
- its budget plays – besides the sustenance of the organizational system – an important role in the field of source-redistribution

The European Union is not a classic federal state because i.e.:

- it has no constitution . However a constitution was signed on 29 October 2004, by the member states, it has not come into force yet,
- there's no European party system
- its organizational system does not apply classic principles of the division of powers so it has not got a government
- its citizens do not have or do have leastwise just a little bit of Community Identity.
- Its operation is dominated more by the interests of member-states, than by the interests of the Community.¹

After the mentioning of these facts the question can be raised: if the European Union is not a traditional international organization, and not a classic federal state, what is this in a public legal aspect? What are the characteristics of this cooperation among European states from a public legal point of view?

The Constitutional Court of the German Federal Republic – in one of its decisions – gave the following brief answer to this question: the Treaty of Maastricht, which established the European Union, is not the basis of a state that relies on one single nation that builds up a state. That is why the European Union can not be a "Bundesstaat", or with other words, a federal state.

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¹ Navracsics Tibor: Európai belpolitika. Korona Kiadó Budapest, 1998. p. 57.

But at the same time the European Union is not only a confederation, not a “Staatenbund”, because its member states delegated a part of their sovereignty. We can place the European Union between the above mentioned two extremes that can be described with the term “Staatenverbund” which means with other words a federation of states. This is such cooperation between the states, which has a wider range of competences than the confederations, but also does not have the entire autonomy of a sovereign state.²

We agree with the standpoint of the German Constitutional Court, but we find reasonable to analyze this problem more extensively. Moreover to reveal public legal aspects of the European Union’s institutional system in a wider range. These theses will be explained in the following point within the confines of this essay

1. Theses on the public legal characteristics of the European Union’s organizational system: the present situation

Thesis 1: There is no separated institutional system in the European Union

The EU which was established by the Treaty of Maastricht – in contrast with the three Communities that have been operating for several decades: the European Steel and Coal Community, the European Economic Community and the European Atomic Energy Community – did not receive legal personality from the establishing states. That is why it can be a direct subject of the international public law. This can be the main reason of the fact, that the establishing members did not create a sui generis organizational system by the Treaty of Maastricht. It was decided that the three Communities would lend and the Union would hire the Communities’ organizational system, which has been common since 1965.

The first Article of the Treaty states: „The Union is based on the European Communities, which is complemented by the policies and cooperational forms established by this Treaty.”

This means that – similarly to other intergovernmental organisations – the European Union has its own organizational system: the Parliament, the Council of Ministers, the Commission, the Court, the Court of Audit, the Committee of the Regions, the Economic and Social Committee, the European Investment Bank and the European Central Bank.

Thesis 2: The organizational system was created only on a supranational level.

In the countries of the world -apart from some minor states like Luxembourg, Andorra, Lichtenstein etc, - the organs of the state power are divided into central, territorial, local organizations. If we take a look at the system of the European Union, we can realize that the Community’s organs, which were created only on a supranational level, are above the level of a certain member state. In other words: the European Union has only central organizations and these central organizations do not have deconcentrated territorial and local organs. In fact –at least theoretically – it should have been possible for the European Union to deconcentrate its own executive organs in the member states. These executive organisations should have been governed directly by central organizations. This would have offended seriously the sovereignty of the member states more extensively: the balance of power would have thrown off among the interests of the European Union and the member states and among the interests of the nation-states and the Community.³

In this point it is important to put the focus on the fact that the power centres of empires - according to the experiences of history - which came into being as a result of the military conquests deconcentrated its own organisations almost every time in the conquered states, in order to ensure the exquisite execution of the decisions. Another problem is that the existence of the empires, which seemed to be the most effective way of organizing a state, was always temporary. It is possible that the organizatory solution of the „European Empire” that came into being as a result of the intensification of the European integration process which began in 1951 will be more effective and it will be stapled and will meet the European requirements.

² Fritz Rittner: Az Európai Unió útja a szövetségi állam felé. Jogtudományi közlöny 1995. június. P. 13.

³ Torma András: Európai közigazgatás, régiók, önkormányzatok. Virtuóz Kiadó Budapest, 2001. p. 73.

Thesis 3: The Union's central organizational system and the administration of the member states complete their executive task by supplementing each other, co-operating as a network of organizations.

The tasks of the European Union's central organs – in an administrative scientific sense – are: setting the aims, collecting informations, decision-making, coordination, controlling. The execution – which can be found between the coordination and controlling phase in the administrative cycle – is in fact the execution of central made decisions in lack of the deconcentrated Community organizations in the member states' national administration. This means that the administrations of the member states are obliged to execute the decisions of the Community and they function as quasi-Community organizations. They act as territorial or local organs of the European Union.⁴

Acting this way they provide the personal, material, legal conditions needed to realize the decisions made at Community level and they make sure that the Community rules will prevail effectively. This is formulated in the Treaty of Rome, Article 10. (The fidelity – clause) in the following way: „ ... the member states make every appropriate general and single arrangement in order to provide the fulfilment of those obligations which arise from the Treaty or the activity of the Community organizations. The member states abstain from such measures, which can endanger the fulfilment of the aims proposed in this Treaty.”

It should be attached that the national administrations of the member states play an important role not only in the executive phase but also in the phase of decision – preparation and during decision-making.

Do not forget the fact that the Council of Ministers is the main decision-making body of the European Union, where the ministers of the member states are presented. The member states' central administration elaborates the national standpoint that the Ministers must represent. This is approved by the government under certain national-parliamentary control.

It follows that the central organs of the European Union and the whole administration of the member states wield power (which was delegated to the Union by the member states) as indispensable partners of each other as a network of organizations. That's why their relationship is characterized not so hierarchically, but complementary, in other words: it is the principle of administrative division of functions.⁵

Thesis 4: The division of powers, which is a dominant characteristic of a democratic constitutional state, does not prevail squarely in the institutional system from an organizational point of view.

If we examine the organizational system of the European Union, we can state that in the aspect of certain Community organs the division of powers – which is one of the main characteristics of a constitutional state – does not prevail squarely. The emphasis should be put on the word: „squarely.”

It's not about that the power - delegated to the Community by member states - would accumulate in one hand, but about that the principle of the division of powers prevails not so unambiguously in the European Union itself than in the member states of the European Union or in the democratic constitutional states.

The Council of Ministers not only releases legal acts, but also plays an important role in the field of execution. At the same time in respect of the release of legal acts nowadays the European Parliament is an indispensable partner (co-legislator). Furthermore: the European Commission itself has its own competence in releasing legal acts in order to ensure the functioning of the Common Market. In respect of the central execution of the Community law – in addition to the Council – the Commission plays the dominant role. As the Treaty of Rome states, the Commission supervises the realization of the provisions of the Treaty and the provisions enacted by the Community institutions. On the other hand the European Commission has competences – delegated to it by the Council – on the field of executing the provisions enacted by the Council.

Thesis 5: The institutional system functions on the basis of the principles of cooperation and institutional balance.

⁴ Albertó J. Gil Ibáñez: A közösségi jog ellenőrzése és végrehajtása. Osiris Kiadó Budapest, 2000. p. 54.

⁵ Lőrincz Lajos: Európai integráció-, magyar közigazgatás. Magyar Közigazgatás XLVIII. évfolyam 7.szám, 1998. július pp. 402-406.

In the respect of the relationship among the organs of the European Union's institutional system the obligation of cooperation is a dominant principle.

Though expressis verbis it is not included in the Treaty of Rome, the legal exercise of the European Court – besides the declaration of this obligation in the respect of the member states – expanded this principle to the Community institutions.⁶ Furthermore: the Treaty of Maastricht included the cooperational obligation of the Council of Ministers and the European Commission as a written legal standard. According to the Article 3 of the Treaty:

„The Union guarantees the consistency of its external activities on the field of external relations, security, and economy and development policy. The Council and the Commission is responsible for ensuring this consistency and they cooperate in order to reach this goal.”

The 45th Article of the Treaty of Maastricht lays the charge of cooperation on the Council and the Commission too. According to this they ensure the consistency of the measures taken by the so called „closer cooperation” together and they also ensure the consistency of these measures and the policies of the Union and the Community.

This provision points at the direction of another principle which is the principle of institutional balance. According to the legal exercise of the European Court this principle means that the Community institutions can not go beyond their power, which means the prohibition against secession. Moreover: we can ask not only the exercise of the European Court but also the law for help in respect of the institutional balance. The 5th Article of the Treaty of Maastricht states that the Parliament, the Council, the Commission, the Court and the Court of Audit can act on their competences only under those conditions which are included by the Treaties and only in order to achieve the goals set in the Treaties. We can see that the principle of institutional balance means basically the principle of prohibition against secession in the field of administrative law.

Thesis 6: The institutional system fought and is still fighting against the problems of legitimation.

If we analyze the comparison of the institutional system and the tasks of the European Union and the European Community from a historical aspect, we can state that this system fought and still fights against serious democratic deficit in the institutional system, because the members of the Council which releases the Community's legal acts are not elected directly by the citizens of the European Union. It's true, that the deficit decreased continually from time to time, because of the involvement of the European Parliament in the legislation process. This organ has been elected directly by citizens since 1979. Then this involvement process continued step-by-step (1986 Single European Act, 1992 Treaty of Maastricht, 1997 Treaty of Amsterdam, 2001 Treaty of Nice).

Basically we can say that though this democratic deficit decreased from time to time, it still exists. The importance of this question is proven not only by the fact that the European Parliament's legislative powers expanded (as I have already mentioned), but also by the fact that the European Constitutional Treaty – which was signed in 2004 – institutionalized the involvement of the member states' parliaments in the legislation process.⁷

Moreover: the European Convention on Human Rights can be a further proof of this!

The 3rd Article of this Convention's First Complementary Protocol states that there must be free elections with secret votes at reasonable intervals. It was resulted in a legislative body which reflects the will of the people.

Thesis 7: The development and the history of the institutional system reflect the fight between the member states and the supranationalism.

The intensification of the integration, which happened step-by-step, reflects this fight, which is also present during the formulation of the competences of the Community's organs. The European Union's integration means the delegation of the member states' competences (more and more significantly) to the Community's institutions. With other words: member states give up a part of their sovereignty. Though this transfer happened step-by-step the tendency is unambiguous: the tasks of a member state are taken over more and more by Community institutions.

⁶ Kende Tamás (Szerk.): Európai közjog és politika. Osiris-Századvég Kiadó Budapest, 1995. pp. 123-124.

⁷ Horváth Zoltán: Kézikönyv az Európai Unióról. Magyar Országgyűlés Budapest, 2005. pp. 142-144.

The duality of member states and supranationalism – as we have already mentioned - can be observed in the aspect of the composition of them. The Council of Ministers basically represents or confronts the interests of the member states. Its members are the ministers of the member-states but at the same time its decisions have supranational characteristics, because they are applied to the whole Community. These decisions must – in accordance with the fidelity-clause – be executed by each member states: even if the representative of a certain state may have voted negatively during the decision-making process.

This fight between supranationalism and the member states came to surface in the intergovernmental conference held in 1990-91, where the member-states must have decided the way of the integration's development: whether they should turn in the direction of the cooperation between the member states or they should take another direction. The Dutch presidency managed to work out a solution which could have solved the question. According to the mentioned solution the relationship between the member-states should have turned into the direction of supranationalism in 1991. In contrast with these plans the Luxembourg Presidency preferred the cooperation among member-states. At the end of the Conference the heads of the states and the governments – as so many times before – made a compromise with each other in December, 1991. They decided to build the construction of the European Union on 3 pillars, out of which the 1st Pillar embodies the European Community and the cooperation carried out by them. The 1st Pillar functions in a supranational way, while the 2nd and 3rd Pillar, which contains the common foreign and security policy, and the cooperation in the field of internal affairs and justice, functions in an intergovernmental way. The 2nd and 3rd Pillar respects the sovereignty of member states, so they function on the basis of unanimity.

The Maastricht Treaty, signed in 1992, which established the European Union, reflected the compromise that the heads of the states, and the governments reached 2 months before. That is why it can be stated that the Maastricht Treaty did justice between the 2 standpoints at the same time realizing them in the structure of the 3 Pillars of the European Union.

Thesis 8: The institutional system changed and is still changing due to struggles of power.

Neither the European Communities, nor the European Union's institutional system – neither in its post form, nor in its present form – has been built on the basis of a mentioned script. This struggle has been fought not only by the existing Community institutions with each other but also by the member-states or by the institutions of member states for acquiring more and more of the competence delegated to the Union by the member states. As an example for the struggle between Community institutions, can be mentioned the struggle between the European Parliament and the Council of Ministers. As a result the Parliament became a co-legislator organization. It can also be mentioned as an example the tough fight of the self-governments in order to be able to represent specific interests. Due to this struggle the Treaty of Maastricht constructed the Committee of the Regions as a consultative organ of the Community that is destined for asserting the interests of the self-governments on the Community level.

Thesis 9: Community institutions rival with each other, but on the other hand they are characterized by fragmentation.

According to the obligation of cooperation - mentioned in the 5th thesis - we could expect the central organs to make a coherent unit to strengthen or back each other. However the legal literature points at the fact that – according to the practical experiences – the present situation is not exactly the same.

On the one hand there was and still there is an immense competition among the Community's institutions and on the other hand each of them is characterized by fragmentation practically. We have already referred to the struggle between the Council and the Parliament and the European Commission can be mentioned as an example to the fragmentation. The fragmentation that characterizes the Commission reveals in the duality: the Commission – mainly through its DGs and Services and through about 25000 European Union public servants – is no doubt a bureaucratic organization. At the same time it is also a political organization.⁸

⁸ Szűcs Tamás: Az Európai Unió politikáinak természetrajza

Thesis 10: The European Union functions as multi-level governance.

It is among the general characteristics of the European Union's institutional system (central organs) that the supranational interests and the member states are represented through these organizations and so do the different interest-groups of the nation-states.

The central organizations carry various types of the member states' interest. Each member state represents the following interests:

- the European Parliament represents the citizens of the European Union
- the Council of the European Union represents the governments of the member-states
- the Economic and Social Committee represents the employees and employers
- and the Committee of the Regions represents the local governments.

All these organizations try to assert their interests on the Community level, in contrast with those central organs, which we do not mention here: the European Commission, the European Court, the European Court of Audit, which undoubtedly carries the interest of the Community. This kind of governance can be called as multi-level governance.⁹

2. Theses on the public legal characteristics on the institutional system of the European Union: what will happen?

First of all it worth referring to our standpoint on the future of the European Union's institutional system.

What will be the characteristics of the institutional system in respect of the mentioned 10 theses, with special regard to the European Union's Constitutional Treaty?

Ad Thesis 1

The European Union will be a self-standing subject of the international public law; it will receive a legal personality and will have its own – sui generis – institutional system.

Ad Thesis 2

There will be only central organizations in the institutional system in short run but in long run it will have deconcentrated local and territorial organizations in the member states. (I. e: common border-guards, common custom-house, European attorney)

Ad Thesis 3

The principle of complementing each other, and the principle of the division of functions in the field of the administration are still presented in the system, but the importance of these principles is to decrease because of the existence and the growing number of the deconcentrated organizations in the member-states.

In respect of the deconcentrated organizations the directing relationships will play an important role.

Ad Thesis 4

The institutional structure of the Council, the Parliament, the Commission, and the Court remains, but the division of competences will be much more precise. The problem of the division of powers will be solved, but it will not be so clear and unambiguous, as it was dreamt by John Locke and Montesquieu or as it was realized by the member states. In order to realize this dream, we have to establish – according to our standpoint – a federal United States of Europe. To the rising of such a Europe, we need much more time.

Ad Thesis 5

The principle of cooperation and institutional balance will also be dominant in the future (in the relationship between the Community institutions.) in respect of the relationship between the Community institutions.

⁹ Horváth Zoltán – Ódor Bálint: Az Európai Unió Alkotmánya. HVG-ORAC Kiadó Budapest, 2005. p. 276.

Ad Thesis 6

The democratic deficit also remains because of the legitimation problems though it will not be so significant, because the Parliaments of the member states became involved in the legislation process. This situation will be the same until the Parliament is an exclusive legislator. On the long term there is a chance for it to come true, for example a Parliament that has 2 Chambers should be established. The representatives of one Chamber should be delegated by the governments of the member states. In this situation, the Council of Ministers „disappears” and the Commission will receive real and exclusive executive powers and it will function as the Government of the European Union. It will be such a government of which composition can not be determined by the member states’ governments, but it will be the result of the European Parliamentary elections.

Ad Thesis 7

The duality of supranationalism and member states still remains in the composition and operation of the Community’s institutional system. At the same time the process, called „bureaucratic fusion” comes true in its entirety. The gist of this fusion is that the Community institutions take the interests of member states into consideration in the case of the decision-making; consequently their decisions will get the characteristics of the decisions of member states. At the same time the institutions of the member-states take the ineterests of Community into consideration, consequently their decisions will have the characterisics as they were made by the Community. The institutions of the member states become „European”.

Ad Thesis 8

The configuration of the Community’s institutional system realizes as a result of a process that takes several years. The Constitution of the European Union should come into force soon, because it would insure the development and the existence of the EU.

Ad Thesis 9

The rivalry decreases among the Community institutions but does not stop until the realization of the conditions mentioned above in the 4th and 6th thesis; consequently it will not stop until the born of the federal European United States.

Ad Thesis 10

Through the realization of the multi-level governance the European Union succeeded in raising the various interests of member states onto supranational level. Moreover, it managed to balance them. Acting like this, the application of the principle of multi-level governance will be a feature of the European governance.